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January 6, 2017

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**BY ECF**

The Honorable Joseph F. Bianco  
U.S. District Court for the Eastern District of New York  
100 Federal Plaza  
Central Islip, New York 11722

**Re: *United States of America v. Kenner*, Cr. No. 13-607 (JFB)**

Dear Judge Bianco:

This firm represents Danske Bank A/S, London Branch ("Danske") in connection with the forfeiture proceeding in this case. We write to clarify a few issues raised in the Government's Reply Memorandum in Support of its Motion to Enforce the Protective Order, dated December 22, 2016, ECF No. 425, in which the Government opposes the motion to, among other things, allow a sale of a parcel of the Diamante Resort to construct the San Marcos Condominiums.

The Government states that "it is unclear why, if this proposed sale is truly at market value and at arms-length, neither Danske Bank nor DCSL have obtained an independent appraisal of the San Marcos property or provided marketing information." Gov't Mem. at 11-12. Danske explained the basis for its decision to agree to the transaction in its letter to the Court of December 19, 2016, ECF No. 423. Danske has approved parcel sales in the past without requiring an appraisal and does not believe that an appraisal is necessary as to this parcel.

In addition, the Government relies in its submission on an October 2015 appraisal of the Diamante Resort that Danske requested. Gov't Mem. at 10. The Government states that the appraisal assigned a fair-market value of \$330 million to the Resort. *Id.* That appraisal, however, did not consider the Protective Order or forfeiture proceeding in determining the market value of the Resort. It therefore does not provide the likely purchase price for the Resort while it is restricted by the Protective Order or subject to potential forfeiture. Danske believes that the Protective Order and forfeiture proceeding have had a substantial negative impact on the market value of the Resort.

Whatever the present market value of the Resort, moreover, there is a real risk that the project will run out of cash by October 2017, which will result in a default on the Borrower's required October 2017 debt repayment. For the reasons stated in our December 19, 2016 letter, Danske is concerned that the Borrower will default on its obligations to Danske in less than a



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year. Danske believes that the proposed sale to construct the San Marcos Condominiums will contribute to paying down Facility C.

Finally, contrary to the Government's suggestion, Danske's statement in the background section of its letter of December 19, 2016, that KAJ Holdings, LLC owns 40% instead of 35% of Diamante Cabo San Lucas, LLC was simply an error by counsel in the letter.

We thank the Court for considering this matter.

Respectfully,

A handwritten signature in blue ink, appearing to read "D. Cinotti", with a long horizontal line extending to the right.

David N. Cinotti

cc: All parties of record via ECF  
Thomas McC. Souther, Esq. and Kevin P. Mulry, Esq. (by email)